Comment Summary Response & Concise Statement – AQ246FS
Amendments to the Air Quality Regulations
Substantive Changes to Proposed Rule AQ246F Nonattainment New Source Review; Prevention of Significant Deterioration
LAC 33:III.504 and 509

COMMENT 1: — The department is urged to discuss the proposed regulation with EPA before final adoption of the proposed state regulation. The department has proposed some provisions which differ from the federal regulations. It must be demonstrated that the state provisions are at least as stringent as the federal regulations. By discussing the state program with EPA prior to adoption of the rule these matters can be addressed and lines of communication can be maintained.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 1: — Because LAC 33:III.504 and 509 differ slightly from the federal NSR Reform rules, LDEQ must demonstrate that such provisions are at least as stringent as their corresponding federal counterparts.

Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. The addition of a definition which clarifies that the only "malfunction" emissions to be excluded are those not compliant with federal or state standards ensures that Louisiana's PSD and NNSR rules are at least as stringent as the federal NSR Reform rules.

Additionally, the NSR Reform federal rules exclude certain "clean coal" projects from the definition of "major modification" by deeming them not to be "a physical change or change in the method of operation." Louisiana's PSD and NNSR rules omit the exclusions for temporary and permanent clean coal technology

demonstration projects and for the reactivation of a very clean coal-fired electric utility steam generating units. Louisiana has only 4 coal-fired power plants, a handful of pulp and paper power boilers that burn coal with other fuels, and no known decommissioned coal units. Due to the magnitude and variety of emissions associated with such facilities and the relative infrequency at which they are modified, LDEQ believes it would be best to maintain as much oversight as possible into matters associated with coal combustion. Because all major modifications to coal-fired units would be subjected to full NSR review, Louisiana's rules are at least as stringent as the federal rules.

Finally, the federal NSR Reform rules contain no apparent consequences for underestimation of "projected actual emissions." Louisiana's PSD and NNSR rules include additional requirements in the event "projected actual emissions" are underestimated; thus, it is at least as stringent as the federal rule.

COMMENT 2: §504.D.9 and 509.R.6 — Since EPA has not responded to the D.C. Circuit Court of Appeals remand on "reasonable possibility" provisions for recordkeeping and reporting requirements, the department needs to address the concerns of the Court by providing an acceptable explanation or devising an appropriate alternative, if the department chooses to keep the "reasonable possibility" provisions for recordkeeping in its final rule.

FOR: The department should address the concerns of the Court by providing an acceptable explanation or devising an appropriate alternative to the "reasonable possibility" provisions for recordkeeping.

AGAINST: Given the circumstances and existing language with LAC 33:III.504 and 509, it is not necessary to develop an independent justification for EPA's "reasonable possibility" standard or otherwise establish alternative recordkeeping requirements.

RESPONSE 2: — The D.C. Circuit Court of Appeals is concerned that EPA "failed to explain how, absent recordkeeping, it [EPA] will be able to determine whether sources have accurately concluded that they have no 'reasonable possibility' of significantly increased emissions." Also, the decision noted, "Without paper trails, however, enforcement authorities have no means of discovering whether the exercise of such judgment was indeed 'reasonable.'"

The department agrees with the Court in that the only way for a source to ensure that a given physical change or change in the method of operation does not result in a significant net emissions increase is for the source to keep records relating to that change.

LAC 33:III.504.D.11 & LAC 33:III.509.R.8 should result in substantial records being maintained for 5 or 10 years following the date an emissions unit resumes regular operation after a project, depending on whether or not the project involves increasing the unit's design capacity or its potential to emit and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase.

The department expects that EPA will respond to the Court's concerns in the relatively near future. If justification for the recordkeeping concerning projected actual emissions is later provided by EPA, then no further changes to LAC 33:III.504 and 509 will be necessary; if the federal rule is later changed, then LDEQ will modify its regulations as necessary.

COMMENT 3: §504.J.3.b — *Actuals PALs*. Since the department limited this provision to emissions associated with authorized startup, shutdown, and malfunction the state needs to address the following questions concerning *Actuals PALs*.

How does the department define "authorized emissions" associated with startup, shutdown, and malfunction? Does the department require that all emissions associated with a startup, shutdown, or malfunction, be included in the determination of PAL baseline to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Are such emissions excluded to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)?

Stringency with 40 CFR 51.165(f)(3)(ii) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or

change.

RESPONSE 3: — The department believes use of the term "authorized" is consistent with federal language requiring the average rate, when calculating baseline actual emissions, to be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

Also, when determining projected actual emissions, a source should not assume this figure will be greater than its potential to emit (i.e., include emissions not "authorized" by its permit).

Concerning the association of the terms "authorized" and "malfunctions," the department's intent is to avoid semantic issues resulting from use of the term "malfunction."

For example, if a process upset diverts vent gases to a backup control device permitted as an alternate operating scenario, allowable emission limits may not be exceeded, though some might consider the process upset to be a "malfunction." In such a case, the emissions from the backup control device should be included in calculation of baseline actual emissions (unless, of course, they must be excluded for other reasons, such as promulgation of new regulations).

Releases that do **not** qualify for the federally permitted release exemption under CERCLA and EPCRA, based on EPA's April 17, 2002 guidance (67 FR 18899), should not be included.

It has not been the department's practice to grant variances for excess emissions resulting from malfunctions. Moreover, effectiveness of variances is not made retroactive to cover situations which have already occurred.

Region 6 has also weighed in on the issue of startup/shutdown emissions and NSR. Correspondence from Mr. David Neleigh, Chief of the Air Permits Section at EPA Region 6, to Ms. Joyce Spencer of TCEQ (formerly TNRCC) states that:

"The EPA acknowledges that at the time of previously issued permits many entities may not have had the technology or methodology for 'quantifying' and permitting their MSS [Maintenance, Startup and Shutdown] emissions. Instead, these permitted entities have relied upon the reporting and enforcement discretion provisions set forth in the Chapter 101 rule concerning

'excess emissions' above the permitted emissions limits. While EPA has endorsed enforcement discretion regarding these 'excess emissions' in the past, it has consistently maintained that these MSS emissions, if unpermitted, are **illegal emissions with regard to the NSR/PSD program** and are subject to the range of enforcement discretion of the permitting agency." (Emphasis added.)

COMMENT 4: §504.K — Definitions

Actual Emissions. The state paragraph "a" differs from 40 CFR 51.165(a)(1)(xii)(A) by omitting regulated NSR when referring to emissions from a pollutant.

FOR: The definition of "Actual Emissions" should refer to emissions of a "regulated NSR pollutant."

AGAINST: Regulated pollutants are established in §504.L.Table 1, which is fully consistent with the "regulated NSR pollutants" established by the federal rule.

RESPONSE 4: — 40 CFR 51.165(a)(1)(xxxvii) defines "regulated NSR pollutant" as 1.) NOx or any volatile organic compounds, 2.) any pollutant for which a national ambient air quality standard has been promulgated, or 3.) any pollutant that is a constituent or precursor of a general pollutant listed previously provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

LAC 33:III.504 does not employ the term "regulated NSR pollutant." Instead, regulated pollutants are established in §504.L (Table 1), and general applicability is set forth in §504.A. The list of pollutants in Table 1 is fully consistent with the "regulated NSR pollutants" established by the federal rule.

COMMENT 5: §504.K — Definitions

Baseline Actual Emissions. Address the following questions because the state paragraphs "a.i" and "b.i" differ from 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) by including the word authorized when referring to emissions.

How does the department define "authorized emissions" associated with startup, shutdown, and malfunction? Does the department require that all emissions associated with a startup, shutdown, or malfunction be included in the determination of *baseline actual emissions* to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Does the department exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)?

Stringency with 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 5: — See Response #3.

COMMENT 6: §504.K— Definitions

Projected Actual Emissions. Address the following questions because the state paragraph "b" differs from 40 CFR 51.165(a)(1)(xxviii)(B)(3) by including the word <u>authorized</u> when referring to emissions.

How does the department define "authorized emissions" associated with startup, shutdown, and malfunction? Does the department require that all emissions associated with a startup, shutdown, or malfunction be included in the determination of *projected actual emissions* to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3) or allowed under a permit or applicable requirement? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Does the department exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3) or allowed under a permit or applicable requirement?

Stringency with the federal requirements in 40 CFR 51.165(a)(1)(xxvii)(B)(3) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 6: — See Response #3.

COMMENT 7: &509.B— Definitions

Baseline Actual Emissions. Address the following questions because the state paragraphs "a.i" and "b.i" differ from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a) by including the word authorized when referring to emissions.

How does the department define "authorized emissions" associated with startups, shutdowns, and malfunctions? Does the department require that all emissions associated with startups, shutdowns, or malfunctions be included in the determination of *baseline actual emissions* to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Does the department exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?

Stringency with 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 7: — See Response #3.

COMMENT 8: §509.B — Definitions

Projected Actual Emissions. The state paragraph "b" differs from 40 CFR 51.166(b)(40)(ii)(b) by including the word authorized

when referring to emissions.

How does the department define "authorized emissions" associated with startups, shutdowns, and malfunctions? Does the department require that all emissions associated with a startup, shutdown, or malfunction be included in the determination of *projected actual emissions* to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c) or allowed under a permit or applicable requirement? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Does the department exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c) or allowed under a permit or applicable requirement?

Stringency with the federal requirements in 40 CFR 51.166(b)(40)(ii)(b) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 8: — See Response #3.

COMMENT 9: §509.AA — *Actuals PALs.* The state paragraph "3.b" differs from 40 CFR 51.166(w)(3)(ii) since the department limited this provision to emissions associated with <u>authorized</u> startup, shutdown, and malfunction.

How does the department define "authorized emissions" associated with startup, shutdown, and malfunction? Does the department require that all emissions associated with a startup, shutdown, or malfunction be included in the determination of PAL baseline to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)? Is the department granting variances for excess emissions from malfunctions and how is the department treating emissions from variances?

Are such emissions excluded to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?

Stringency with 40 CFR 51.166(w)(3)(ii) must be demonstrated by the state.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 9: — See Response #3.

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COMMENT #	SUGGESTED BY
1 — 9	David Neleigh / Chief, Air Permits Section, USEPA